



**NEXT STEPS FOR THE AFRICAN
CONTINENTAL FREE TRADE AREA**
VISUAL SUMMARY

ASSESSING REGIONAL INTEGRATION IN AFRICA | ARIA IX

FOREWORD

The signing of the African Continental Free Trade Agreement (AfCFTA) by 52 African Union member states marked a historic milestone for economic integration in Africa. By 1 April 2019, just over a year after the signing ceremony, the threshold of ratification by 22 countries required for the agreement's entry into force had been reached. The speed of this ratification process is unprecedented in AU history.

The significance of this achievement is not to be underestimated. The vision of African continental integration to which the AfCFTA contributes is more than 50 years old and, as demonstrated in this and previous editions of this report, embodies great opportunities for Africa's structural transformation, economic diversification and development.

The momentum behind the African Continental Free Trade Agreement initiative inspires the focus of this ninth edition of the flagship Assessing Regional Integration in Africa (ARIA IX) report, which asks, "What's next?"

With the phase I negotiations of the agreement now concluded, we must harness its operationalization and use it for further advancing Africa's economic integration. This will involve finalizing the remaining technical work of the phase I negotiations to promptly ensure that the goods of African businesses, traders and consumers flow freely and that service suppliers are unhindered. It will also involve enlarging the number of countries signing, ratifying and depositing ratification instruments. The impressive 24 countries that have ratified it, representing 44 per cent of African Union member States, should now be joined by the rest of the continent to move forward collectively, and meaningfully, in trade integration.

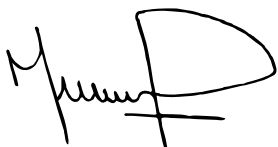
But it is not enough merely for the African Continental Free Trade Agreement to be operational and encompassing. It must also change lives, reduce poverty and contribute to economic development. For this, complementary measures are needed. This report considers a breadth of such measures within the context of AfCFTA national strategies for implementing the agreement.

“ ...it is not enough merely for the African Continental Free Trade Agreement to be operational and encompassing. It must also change lives, reduce poverty and contribute to economic development. **”**

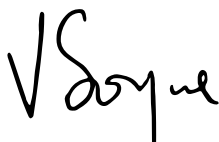
Further, the main focus of this report—and of what’s next for the African Continental Free Trade Agreement—concerns the phase II negotiations scheduled to commence later in 2019. This comprehensive and deep agreement goes beyond mere tariff liberalization to include investment, competition policy and intellectual property rights, far-reaching and transformative topics that are the subject of the phase II negotiations. Provisions on investment—its promotion, facilitation and protection—can allow the AfCFTA to galvanize the investments needed to restructure Africa’s economies. Provisions on competition policy can enable fair competition and market outcomes that stimulate industrialization, competitiveness and development. And provisions on intellectual property rights can incentivize increased innovation, ensure a level playing field and support trade, while protecting policy space for African governments. This report gives rich treatment to the substantive analyses of those topics.

Finally, the potential of the African Continental Free Trade Agreement after operationalization and after conclusion of the phase II negotiations requires attention. This report offers that, considering both how the agreement can help achieve the deeper forms of integration called for by African Heads of State and Government, and also how the modes and means of trade are changing in an increasingly digitizing world. The last chapter of the report deliberates how African countries can prepare for the digital economy. In doing so, it asks whether policy makers should consider e-commerce as a negotiating topic in the AfCFTA, following its prominence in other negotiating fora.

ARIA IX is buttressed with deep and ground-breaking research into topics of considerable interest for African policy makers, trade negotiators, partners and development stakeholders. For the first time in the ARIA series, the African Union Commission, Economic Commission for Africa, and African Development Bank are joined by the United Nations Conference on Trade and Development in preparing this edition. We believe that the rich and actionable research on the issues covered by the report can advance Africa’s development, both in the context of the African Union Agenda 2063 and the United Nations Sustainable Development Goals. We commend it and its findings to those seeking to support Africa in its regional integration, economic transformation and development.



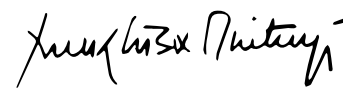
Moussa Faki Mahamat
Chairperson
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Under-Secretary-
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UNITED NATIONS EXECUTIVE
SECRETARY
ECONOMIC COMMISSION FOR
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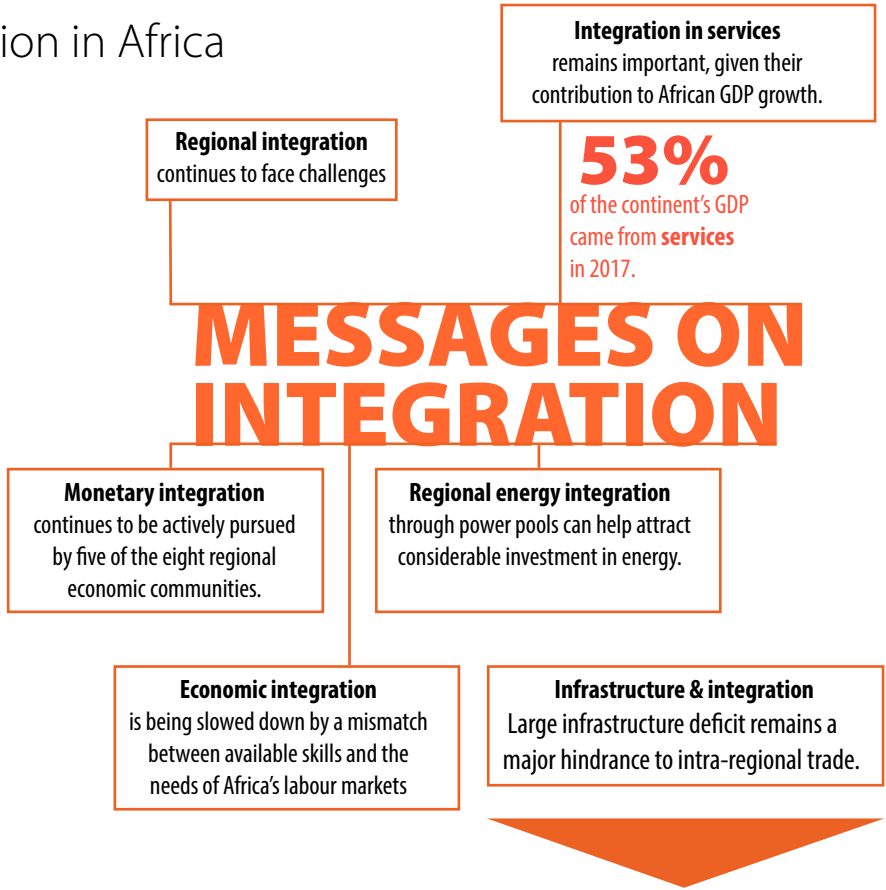
Intellectual Property Protocol

A continental approach to a balanced intellectual property rights system can contribute to the aspirations of Agenda 2063

CHAPTER 1 MESSAGES

The Status of Regional Integration in Africa

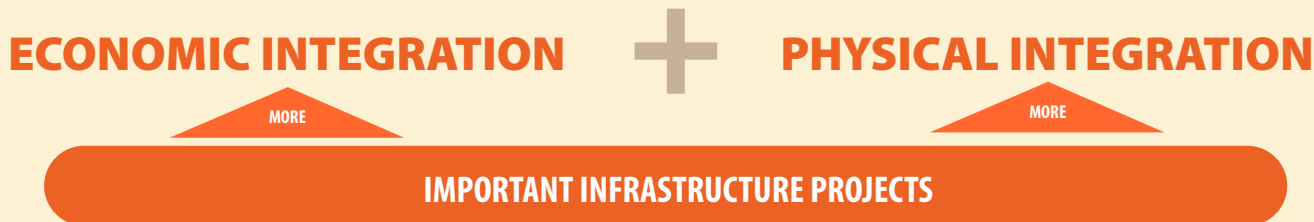
The historic signing of the African Continental Free Trade Agreement (AfCFTA) on 21 March 2018 marked a momentous milestone for regional integration in Africa indicating the strong commitment of African policy makers and leaders to regional integration.



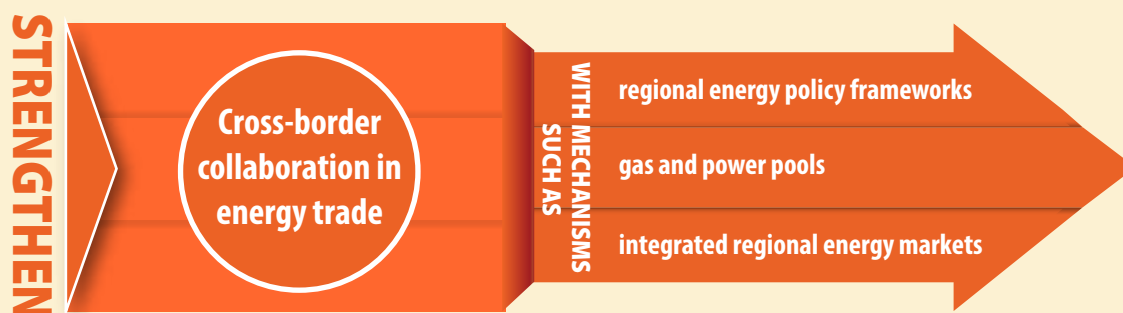
Infrastructure financing can be supported through maximizing the use of **public-private partnerships**, tapping into **national resources**, using regional and global **infrastructure development funds** and implementing **innovative financing tools**



POLICY RECOMMENDATIONS



Progress will require major resources, including leveraging **public–private partnerships** and **innovative financing tools**.



African countries need to **strengthen the instruments** promoting



through both the **regional economic communities** and the **African Union**.



The development of the **African Regional Integration Index** by the **Economic Commission for Africa** in collaboration with the **African Union Commission** and the **African Development Bank** is a powerful tool for this.

Address the “**crisis of implementation**” and translate



These promises include **ratifying** and **implementing** the **African Continental Free Trade Agreement**, the **Single African Air Transport Market**, **peace and security instruments**, **monetary integration commitments** and the **African Union protocol on the free movement of persons**.

CHAPTER 2 MESSAGES

The State of Play and Next Steps for the African Continental Free Trade Area

African countries must take care that the AfCFTA does not just add another strand in the African spaghetti bowl of preferential trade regimes.

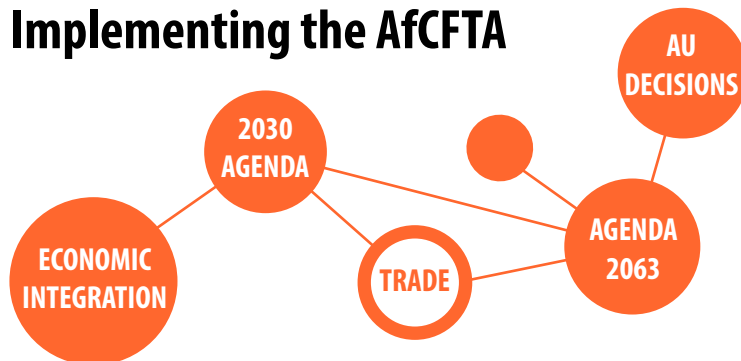


PREFERENTIAL TRADE REGIMES

AfCFTA

Instead, it should give coherence to Africa's internal and external trade policy landscape.

Implementing the AfCFTA



is about **more than trade.**

It is also about dispelling the crisis of implementation of African Union decisions and initiatives and validating the AU and its Agenda 2063. It is a litmus test of African countries' commitment to economic integration.

The AfCFTA has proceeded remarkably.

Fifty-two of 55 African Union (AU) member states have now signed it. As of June 2019, 24 had ratified and deposited ratification instruments with the African Union Commission. Negotiators have concluded all three of the phase I protocols to the agreement and 10 of the 12 annexes (the other two are to be concluded by July 2019), showing commendable progress since negotiations were launched in June 2015.

AU MEMBER STATES AND THE AfCFTA



The AfCFTA aspires to...



...deepen the integration of the continent...

...beyond merely a free trade area.

Among its objectives are to "create a liberalized market [...] through successive rounds of negotiations," "lay the ground for the establishment of a Continental Customs Union" and "contribute to the movement of capital and natural persons."

POLICY RECOMMENDATIONS



The remaining African countries should ratify the AfCFTA without delay

Securing many more ratifications than the minimum of 22 required for the agreement to enter into force is necessary to validate the continent's integration agenda.

Critical technical components needed before the agreement can be operationalized must urgently be finalized

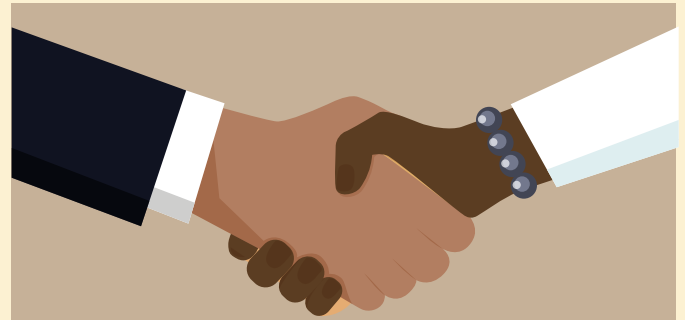
These include schedules of concessions for trade in goods, rules of origin and schedules of specific commitments for trade in services. They must be followed with the phase II negotiations on investment, competition policy and intellectual property rights.

Ratification must be followed by effective implementation

The AfCFTA institutions must be founded, mechanisms established that were envisaged in the AfCFTA's operative provisions and AfCFTA obligations incorporated into the laws and regulations of each participating state. Countries must strategically take advantage of the AfCFTA to achieve economic development and poverty alleviation.

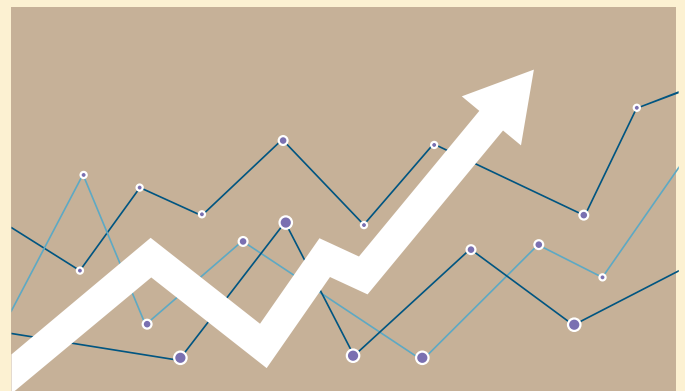
The effectiveness of AfCFTA committees will require a considerable number of prompt decisions

To facilitate this, certain perfunctory decisions could be delegated to the secretariat and decision-making authority delegated to regional economic community representatives in the absence of state representation, or permanent representatives could be accredited to the Committee of Senior Trade Officials, as at the World Trade Organization in Geneva.



Implementation will be more effective if national AfCFTA committees are created by country trade ministries

The committees, made of persons tasked with satisfying AfCFTA commitments and interests, can harmonize their country's approach to implementation. They should ideally be structured within a national AfCFTA strategy.



The deeper integration called for by African heads of state and government requires progressively deepening liberalization under the AfCFTA

Ultimately, a single, fully liberalized, African trade area can subsume the existing REC free trade areas.

Unilateral trading schemes undertaken by Africa's trading partners



can reinforce African regional value chains if they are designed appropriately

African countries should accordingly deploy their **diplomatic capabilities** to **influence trading partners** to **promote regionalism** as they design their trading schemes, including their generalized systems of preferences.

CHAPTER 3 MESSAGES

Taking Full Advantage of the AfCFTA

To take full advantage of the AfCFTA, COUNTRIES MUST BUTTRESS ITS IMPLEMENTATION WITH COMPLEMENTARY MEASURES.

Areas include:



INVESTMENT



PRODUCTION



TRADE FACILITATION

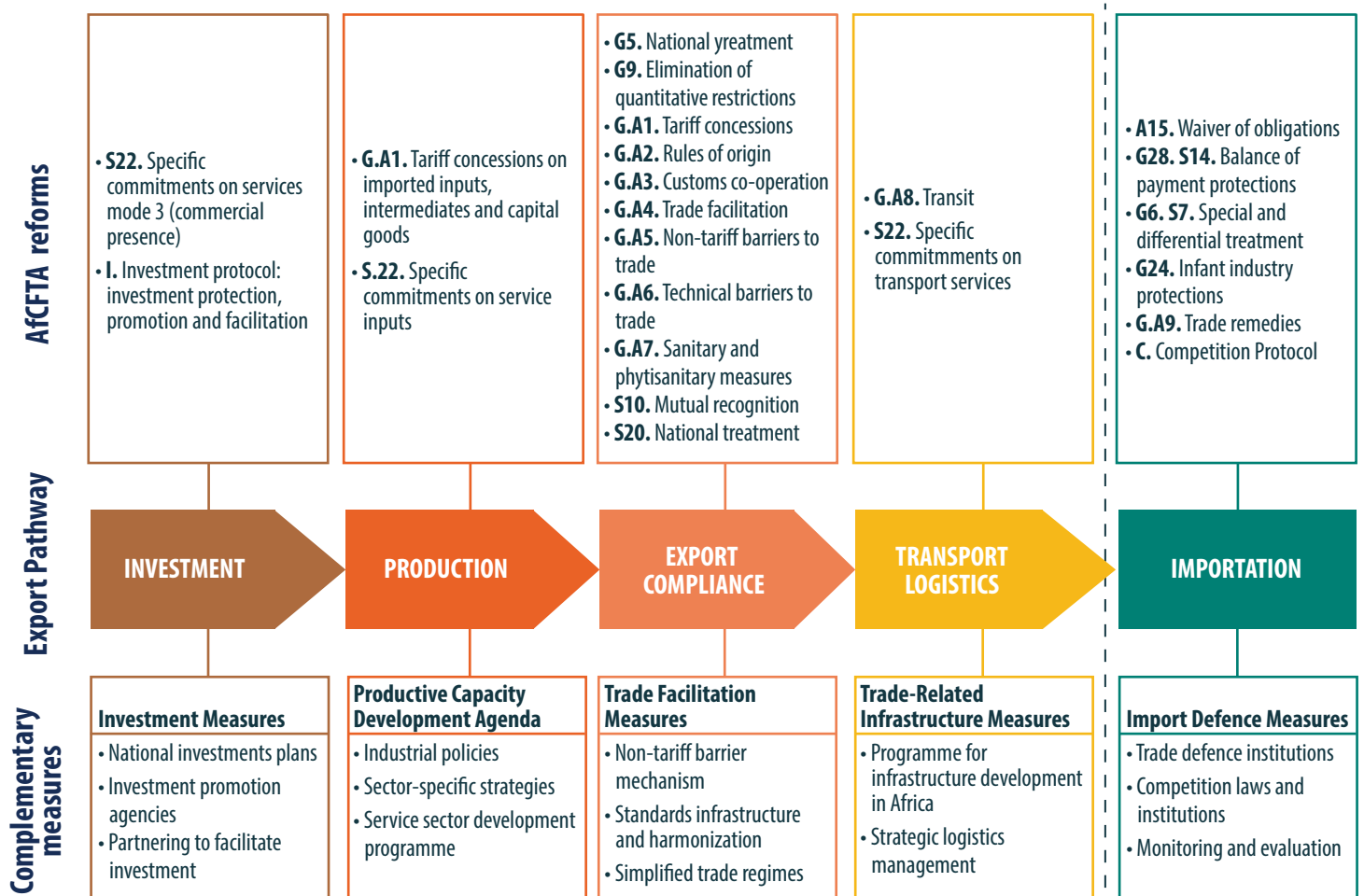


TRADE-RELATED INFRASTRUCTURE



IMPORT DEFENCE

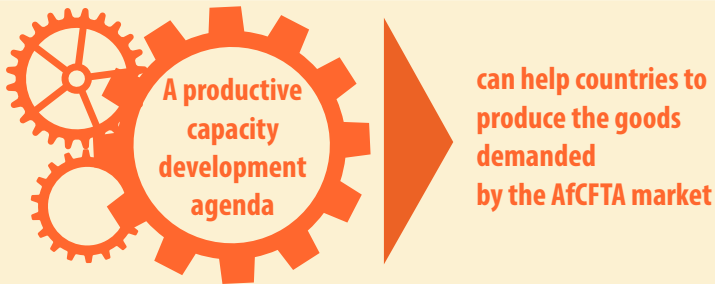
Complementary measures along the export path



POLICY RECOMMENDATIONS



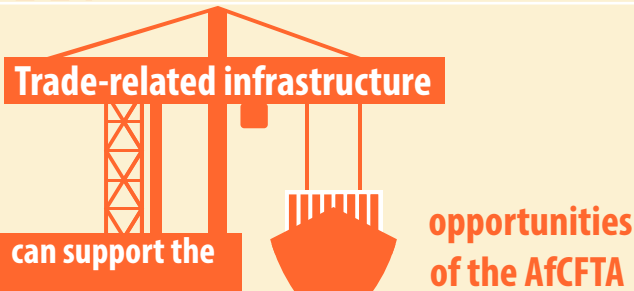
Mechanisms include **national investment plans**, **investment promotion agencies**, **partnerships** with other African countries to learn from their experiences and partnerships with UNCTAD and the Economic Commission for Africa (ECA) for support with UNCTAD Investment Policy Reviews and UNCTAD/ECA Online Investor Guides.



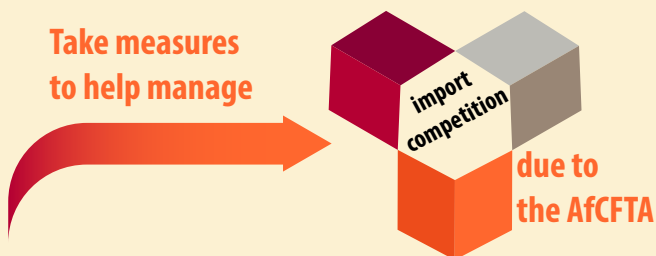
This can involve using **industrial policy** for an overarching enabling environment, **sector-specific strategies** that take a **regional approach to value chain development** and the African Union Commission Service Sector Development Programme, which provides a blueprint for developing competitive services sectors.



Measures include an effectively designed AfCFTA **non-tariff barrier mechanism**, a **continental simplified trade regime** for small and informal traders and standards infrastructure and **strategically harmonized standards** in sectors with high AfCFTA potential.



The Programme for Infrastructure Development in Africa should be implemented, and **infrastructure development** can be aligned with **trade facilitation** by **strategic logistics management**.



Countries can pool resources to establish **trade remedy institutions** at the regional economic community level, establish **competition institutions** at the regional or continental levels and ensure that trade ministries have staff proactively assessing the likely import implications of the AfCFTA, **monitoring customs data for changing import patterns** and hosting private sector stakeholder platforms to **flag import stress**.



They should incorporate **gender mainstreaming** to ensure that the gains from the **AfCFTA support gender equality**.

CHAPTER 4 MESSAGES

Intellectual Property Protocol

The WTO membership of **44 African Union member states** will shape the design of an **AfCFTA protocol on intellectual property rights**.

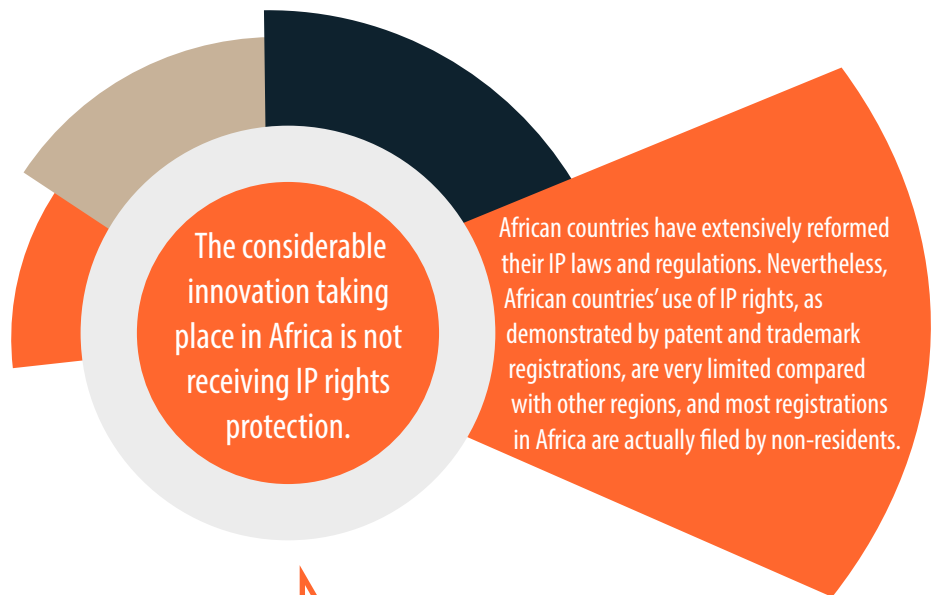
The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not provide exceptions for regional preferential agreements, so **the benefits of any AfCFTA IP protocol must extend to all WTO member states**. African countries also differ considerably in their use of TRIPS flexibilities.

Beyond the WTO, African countries have different obligations in IP treaties. Some participate in multilateral IP treaties and commitments arising from bilateral trade agreements.

Intellectual property (IP) rights, as private rights in an industrial and commercial context, promote entrepreneurship, investment, competition and innovation.

However, they must be counterbalanced against maintaining public policy objectives related to the dissemination of knowledge and indigenous learning.

The AfCFTA provides an opportunity for a continental approach to a balanced IP rights system that responds to the aspirations under Agenda 2063.



3 approaches have been demonstrated for **IP rights integration in Africa**.

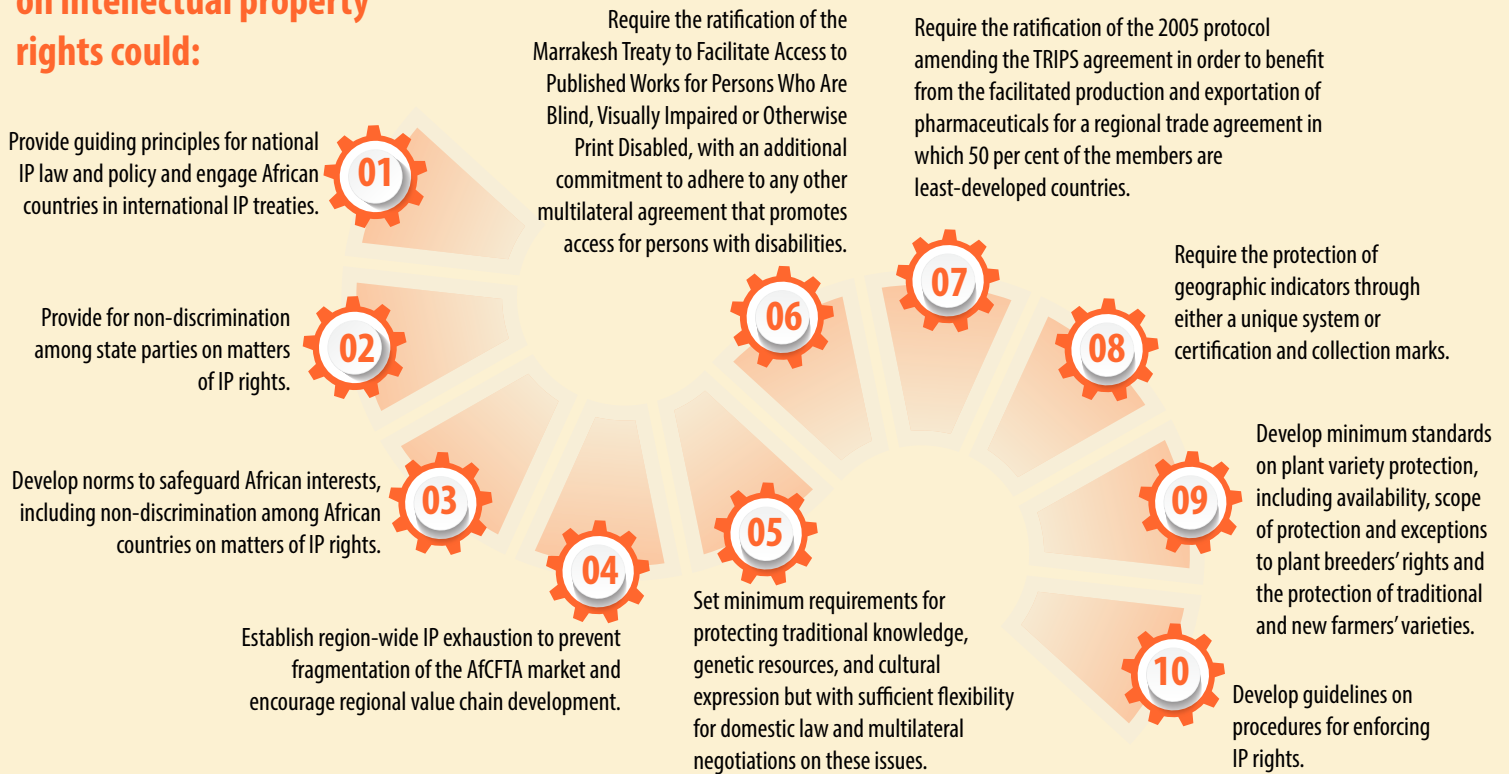
- 1** Regional cooperation and sharing of experiences on IP rights in general
- 2** Regional filing systems, usually just for patents, but also for trademarks and industrial designs as well
- 3** Development of one substantial law or unification of laws for the members of a regional organization. Different parts of Africa have experience with all three models

Developing one substantive IP regime for 55 African Union member states would be challenging. Negotiations might prove overly ambitious, and countries might lose the flexibilities they enjoy in existing multilateral and bilateral commitments or face conflicts with obligations under international and bilateral agreements.

However, An AfCFTA protocol involving only a cooperative framework for IP rights would miss many opportunities. Such a limited protocol would not develop tools for promoting regional integration, address non-discrimination between countries with different international treaty memberships or advance industrial diversification and value chain integration.

POLICY RECOMMENDATIONS

A viable AfCFTA protocol on intellectual property rights could:



AFRICAN IP ORGANIZATIONS

African regional organizations specializing in IP already exist (African Regional Intellectual Property Organization and African Intellectual Property Organization) **The protocol on IP rights should accord observer status to these organizations in its institutional arrangements.**

IP IN NEGOTIATIONS

Phase 2 of the Tripartite Free Trade Area negotiations is intended to include IP. But given the imminent AfCFTA IP protocol negotiations, it would be prudent to **consolidate the AfCFTA and Tripartite negotiations** to avoid duplication and approach the protocols as a single undertaking.

UP RIGHTS

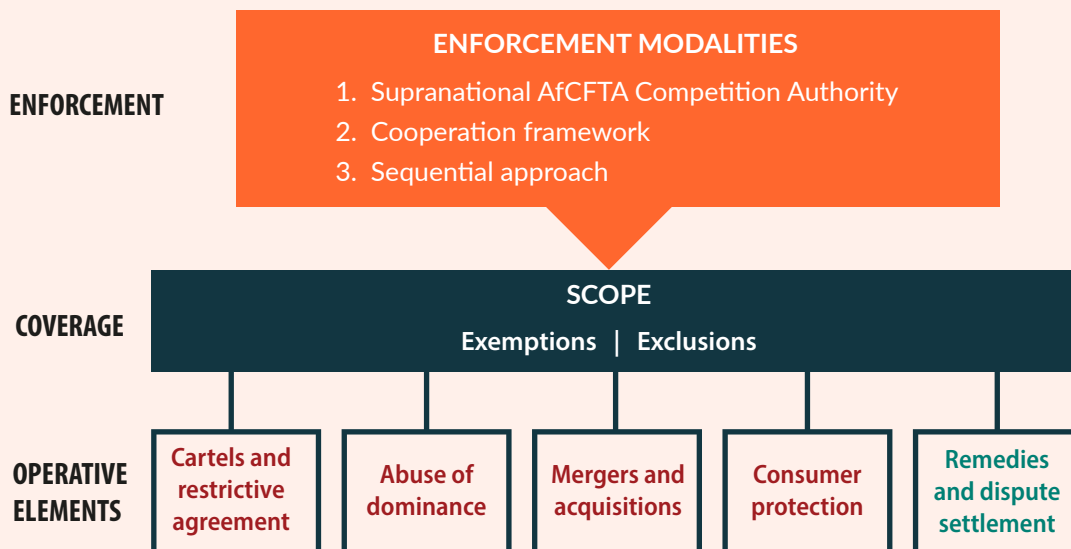
Since IP rights are highly controversial, negotiations about them should be open, transparent and inclusive. They should involve **broad public consultations and debates** and **iterative capacity building for key stakeholders**, as well as training to ensure that negotiators are deeply engaged with subject matter and knowledgeable about available policy options.

CHAPTER 5 MESSAGES

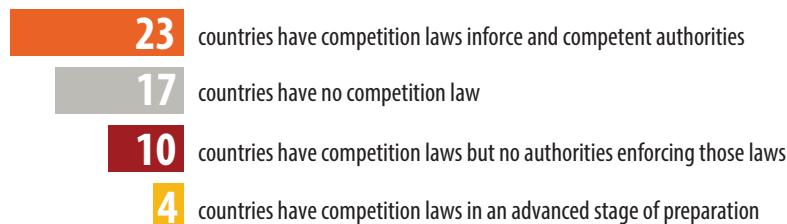
Competition Policy Protocol

The operative elements of a competition protocol are fairly straightforward, most important will be their scope and enforcement:

Schematic overview of AfCFTA Competition Protocol options



Africa's competition regime remains patchy



And calls for a harmonization...



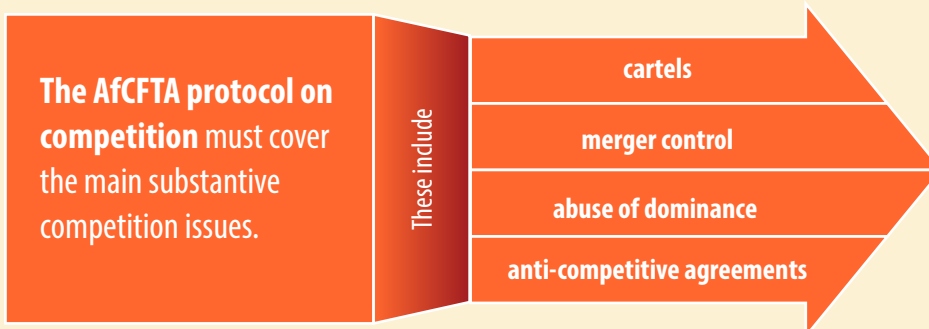
A continent-wide competition regime would be a timely and necessary next step, and countries not belonging to these communities could be included under the AfCFTA framework.

Competition policy is a key driver of the growth of competitive markets in Africa. Cross-border anti-competitive practices prevalent in Africa—such as cartels and abuse of dominance—constrain the growth of competitive markets and harm consumers. National, regional and continental enforcement of competition law will boost the fight against them.

Consumer protection can be addressed in the AfCFTA protocol on competition. Consumer protection is related to competition, and the protocol can ensure that the advantages of an integrated African market extend to consumer welfare.

The African Competition Forum is a springboard for cooperation on competition matters at continental level. The forum is an informal network established in 2011, comprised of 31 members and five regional competition agencies, promoting the adoption of competition principles in African countries to alleviate poverty and enhance inclusive economic growth, development and consumer welfare, by fostering competition in markets.

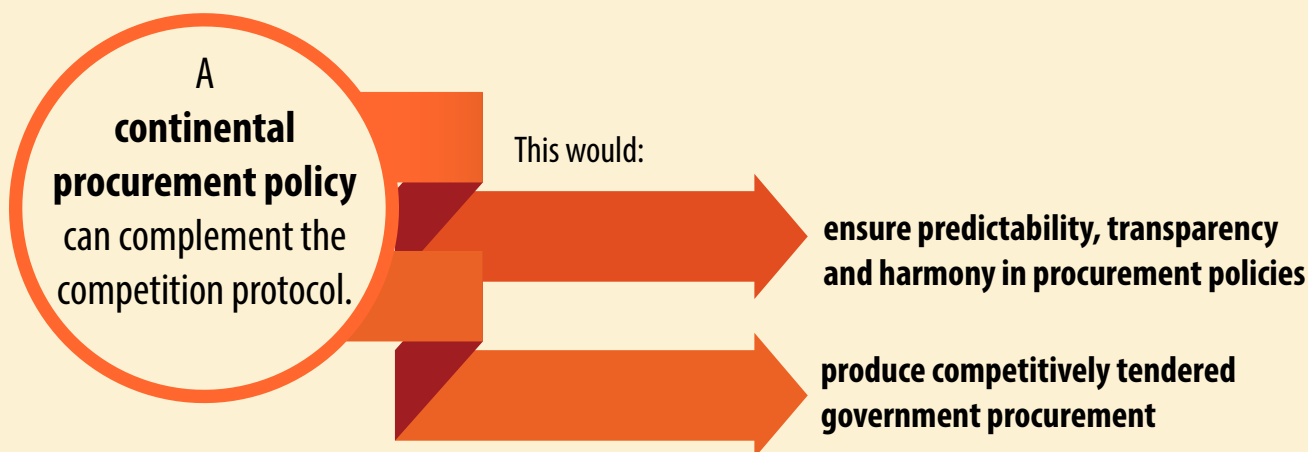
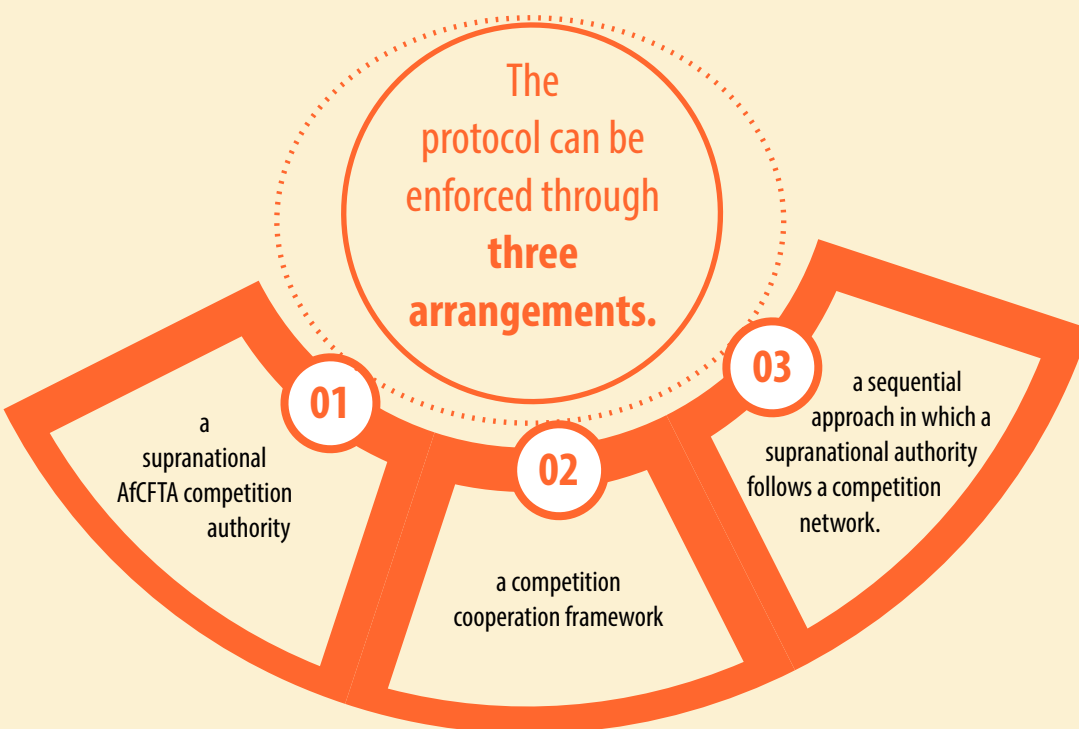
POLICY RECOMMENDATIONS



The protocol should embrace **consumer protection** in a dedicated chapter.

The AfCFTA may be used to provide a **framework for rules and guidelines on buyer power**. Excessive buyer power in corporate conduct has emerged as an important issue that could affect many industries in Africa.

The advancing digital economy raises competition challenges. The capacity of competition authorities will require investment so they can better identify new developments in digital markets, players and business models.

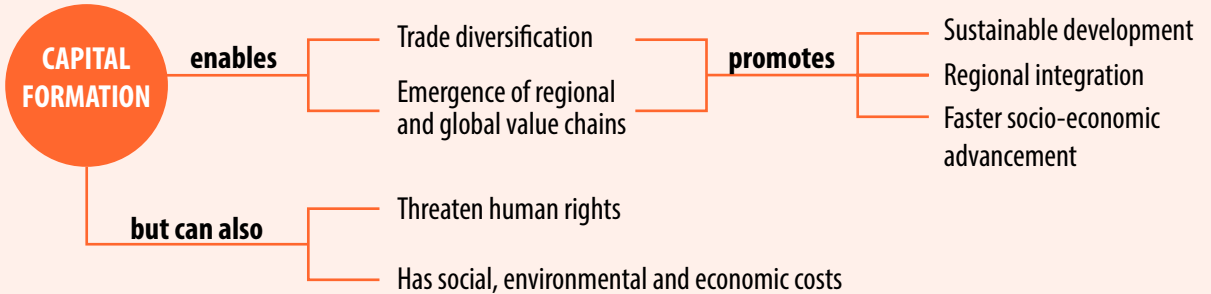


while preserving policy space for legitimate public policy objectives.

CHAPTER 6 MESSAGES

Investment Protocol

To channel **investment for sustainable development**, the investment protocol should **foster flexible and robust regulatory frameworks** supporting an attractive investment environment.



CURRENT OBSTACLES:

1 The African investment policy landscape is fragmented

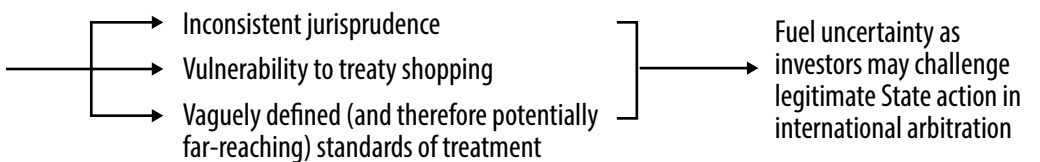
854 bilateral investment treaties.
512 are in force.

Binding regional treaties add further complexity to this entangled and **overlapping investment regime**.



2 Traditional investment treaties predominate on the continent

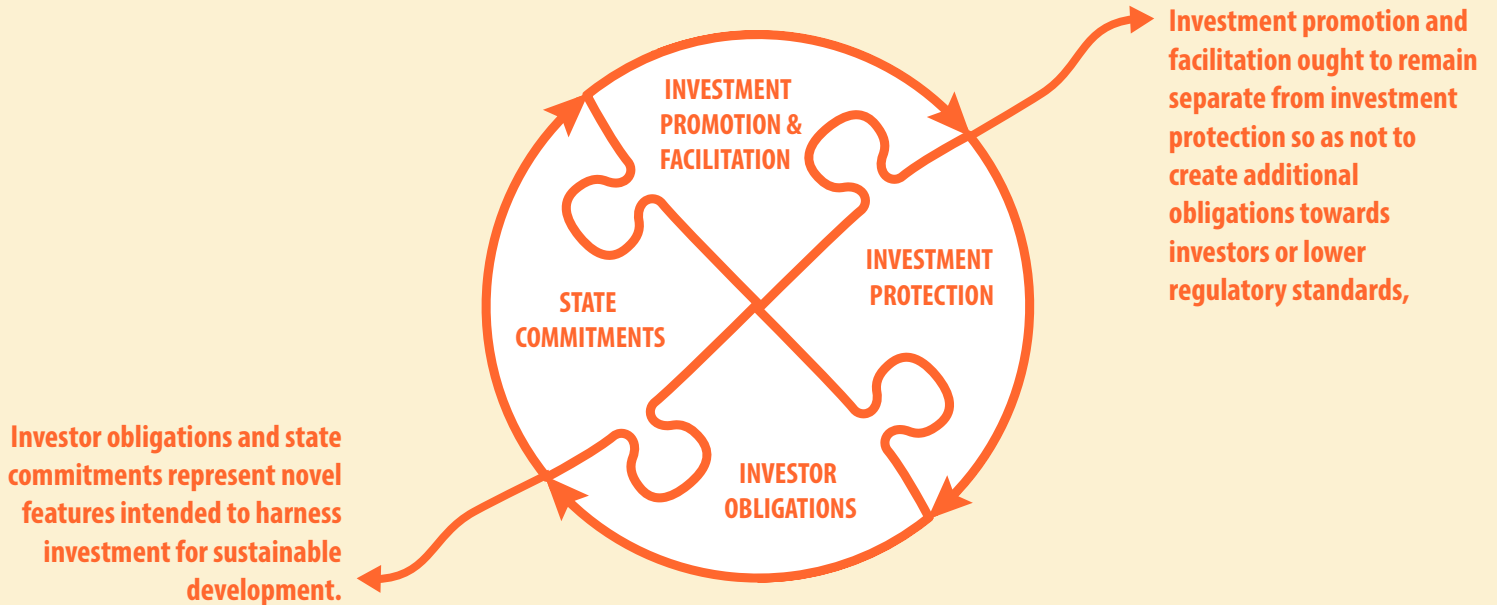
Have major repercussions for the policy and regulatory space available to policy makers



- represents an **unparalleled opportunity for AU member States to revamp the investment policy landscape**
- should foster flexible and robust regulatory frameworks supporting an attractive investment environment to **channel investment for sustainable development**
- Should be **informed by the Pan-African Investment Code (PAIC)**. Although the PAIC guides investment treaty negotiations, the 5th Meeting of the AfCFTA Negotiating Forum in March 2017 declined to annex the PAIC to the AfCFTA since it was “not a binding agreement but a framework of cooperation”; however, the protocol should build on the PAIC’s innovations in a binding investment treaty.

POLICY RECOMMENDATIONS

The investment protocol can be built on four pillars:



A cross-thematic dialogue among specialists and negotiators needs to be established to align the investment protocol with the other AfCFTA protocols.

Parallel negotiations of the phase II protocols provide a unique opportunity for complementarities and minimizing undesirable overlaps.

The investment protocol should feature new-generation investment treaty innovations for predictable, forward-looking and transparent rules to pave the way for further economic integration.

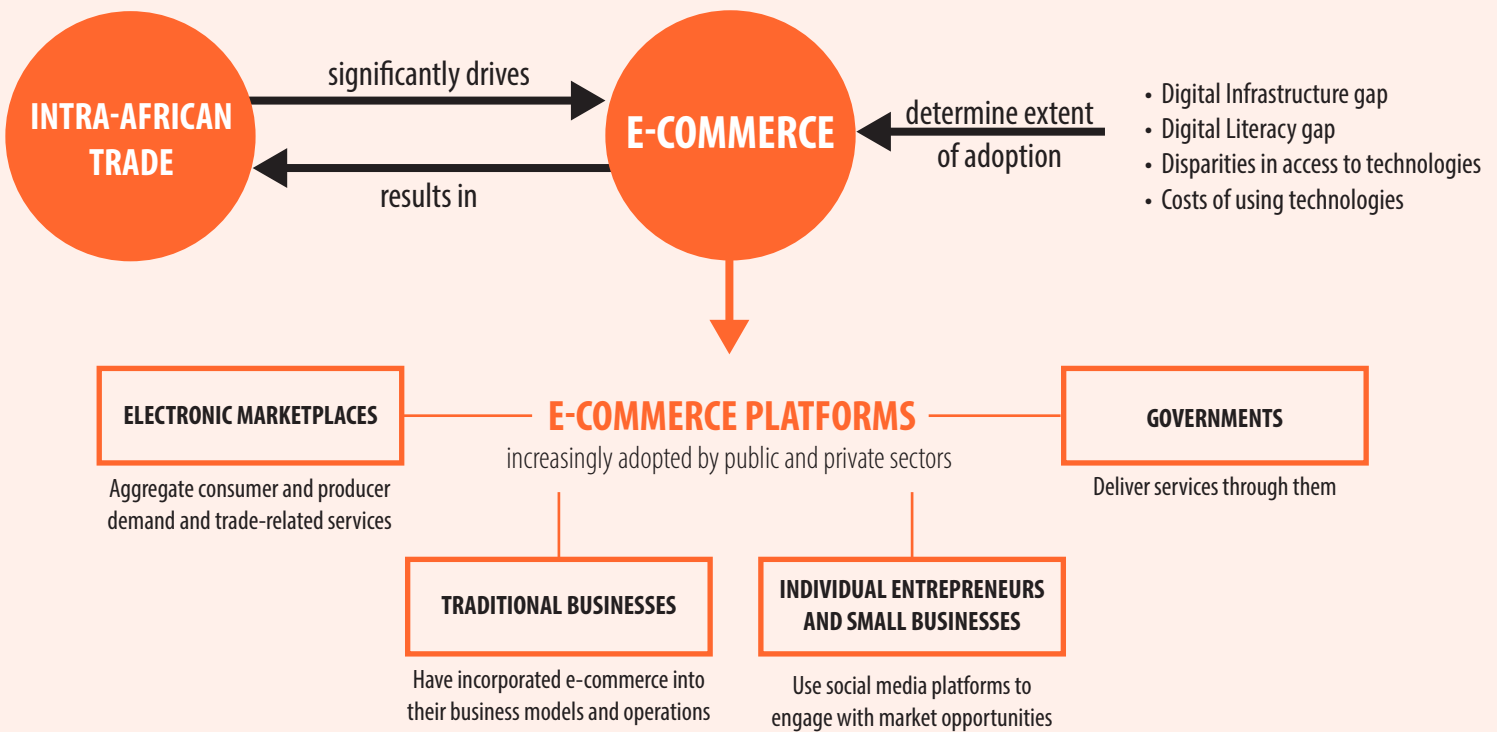
Among the features would be substantive obligations and dispute settlement provisions, development-oriented investor obligations and mutual commitments among African countries to an equilibrium between business activity and sustainable development.

Policy makers can use the protocol on investment as a reference point for future negotiations and renegotiations of treaties with external partners.

Adopting a common African approach in future negotiations can ensure coherence and provide greater negotiating leverage than bilateral negotiations.

CHAPTER 7 MESSAGES

E-Commerce and Integration in a Digitizing Africa



E-COMMERCE POLICY LANDSCAPE

evolving with policies and strategies at regional and national levels

- Cooperation between African countries:** can prevent barriers in digital space from being erected through varied regulatory approaches and can inhibit the fracturing of African countries by technology giants.
- Consistent rules across the African continent:** can create an environment of fair competition for digital and non-digital firms, and can simplify cross-border and national e-commerce.

E-COMMERCE CHALLENGES & OPPORTUNITIES

- BOOSTING INTRA-AFRICAN TRADE ACTION PLAN**
- DIGITAL READINESS**
- POLICY ISSUES**
 - Data
 - Gender
 - Inclusion
 - Cybercrime
 - Taxation
 - Informal trade
 - Consumer protection
 - The digital divide
 - Digital identity
 - E-transaction laws

Important first step for e-commerce development in Africa: AFRICAN DIGITAL TRADE AND DIGITAL ECONOMY STRATEGY

- Seeks to enable AU member States to fully benefit from the fourth industrial revolution
- Facilitates the implementation of the African Continental Free Trade Area

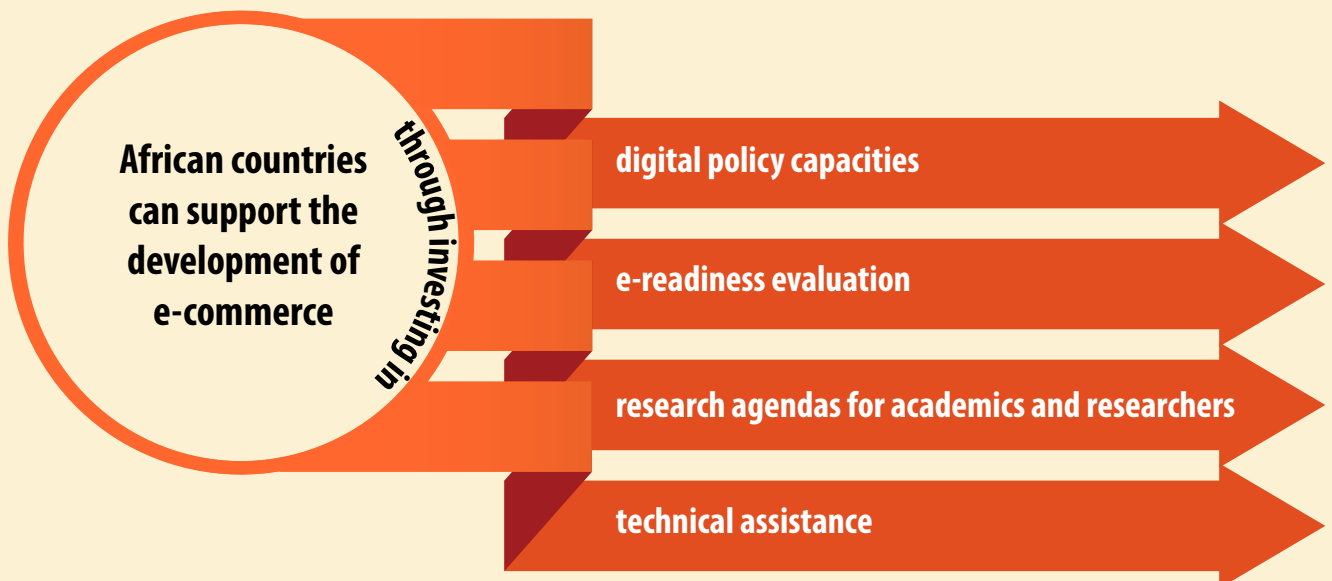
Jan 2019: mandated by the AU Executive Council
Feb 2020: will be presented to the AU Assembly for adoption

POLICY RECOMMENDATIONS

Three policy options are identified for e-commerce in the AfCFTA:



Regardless of the approach taken for e-commerce in the AfCFTA



Signed by 52 African countries, the African Continental Free Trade Area (AfCFTA) is, by the number of participating countries, the largest trade agreement since the formation of the WTO. By 1 April 2019, only one year and ten days after the signature, the threshold of ratification by 22 countries required for the agreement's entry into force had been reached. The speed of this ratification is unprecedented in African Union history.

With so much achieved in so impressive an amount of time, it is time to think ahead to where the momentum of the AfCFTA can be taken. That is the inspiration for this ninth edition of the flagship *Assessing Regional Integration in Africa* report (ARIA IX), which asks: "What's next for the AfCFTA?"

In answering, the report recognizes that it is not enough for the AfCFTA to be merely negotiated, concluded and ratified. It must also change lives, reduce poverty and contribute to economic development. For this, the AfCFTA must be effectively operationalized, but also supported with complementary measures that leverage it as a vehicle for economic development.

Among the most important of the next steps is the phase II negotiations scheduled to commence on intellectual property rights, investment and competition policy in late 2019. These policy areas are the core focus of this report, which takes stock of the current situation across the continent in each of these areas and identifies recommendations for substantive provisions in the AfCFTA. In looking ahead, the report also considers e-commerce and integration in a digitizing Africa, and how the digital economy can interact with the AfCFTA and trade in Africa.